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NORTHERN DISTRICT OF CALIFORNIA

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

HRL

16 BETTER HOMES REALTY, INC.,

17 Plaintiff,

18 v.

19 LAWRENCE VECCHIO, VRI REALTY,
20 INC.,

21 Defendants.

CASE No.

C 07 3058

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR COMPETITION,
FALSE DESCRIPTION, AND INJURY TO
BUSINESS REPUTATION**

DEMAND FOR JURY TRIAL

1 Plaintiff, BETTER HOME REALTY, INC. (hereinafter "Plaintiff" or "BHR"), by its
2 attorneys, as and for its Complaint against Defendants, JAMES VECCHIO and VRI REALTY,
3 INC., alleges as follows:

4 I. JURISDICTION AND VENUE

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6 1. This is a complaint for Trademark Infringement, Unfair Competition, and False
7 Description arising under §§ 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark
8 Infringement) and 1125(a) (Unfair Competition and False Description), for Unfair Business
9 Practice arising under California Business and Professions Code § 17200 *et seq.*; for common
10 law unfair competition and for injury to business reputation.

11
12 2. This Court has original subject matter jurisdiction over this action pursuant to 28
13 U.S.C. § 1338(a) and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the state
14 law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

15
16 3. This Court has personal jurisdiction over the Defendants because Defendants have
17 solicited business within the State of California and solicited franchisees and employees and/or
18 agents of Plaintiff's franchisees within the State of California utilizing Plaintiff's mark and
19 unfairly competed with Plaintiff in the State of California.

20
21 4. Venue is proper in this district under 28 U.S.C. §1391(b) because a substantial part of
22 the events or omissions giving rise to the claims occurred in this district and a substantial part of the
23 property that is the subject of the action is situated in this district.

24 II. INTRADISTRICT ASSIGNMENT

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26 5. This is a trademark case subject to district-wide assignment under Local Rule
3-2(c).

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III. THE PARTIES

6. Plaintiff, BHR is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of California, having a principal place of business at 1777 Butelho Drive, Walnut Creek, California.

7. Upon information and belief, Defendants Vecchio is, and at all times mentioned herein was an individual residing in the State of New Jersey. Upon information and belief, Defendant VRI Realty, Inc., is, and at all times mentioned herein was a corporation organized and existing under the laws of the State of New Jersey, having a principal place of business at 3400 Executive Plaza # 5, Hazelnut, New Jersey 07730.

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IV. FACTUAL BACKGROUND

8. BHR is engaged in the real estate brokerage franchising business under the names "BETTER HOMES" and "BETTER HOMES REALTY". BHR has been continuously engaged in this business using such marks since 1964 in the United States.

9. Plaintiff registered the BETTER HOMES REALTY AND DESIGN mark with the United States Patent and Trademark Office (the "PTO") on June 25, 1985. The registration was renewed on January 27, 2005 and remains in effect until the next renewal date of June 25, 2015.

10. Commencing on or about June 2006, Defendants solicited realtors and customers to its "National Real Estate Company" under the names BetterHomes USA, BetterHomesUSA.com, betterhomesnj.com, betterhomesrealty.com, betterhomesforall.com and BetterHomesByOwner and other similarly sounding names.

11. Defendants' use of "BETTER HOMES" in its promotion and advertising constitutes the use in commerce of a colorable imitation, copy and reproduction of Plaintiff's

1 service mark. Upon information and belief, the marks share an identical sight and sound and a
2 strong similarity of meaning. Defendants' use of BETTER HOMES is deceptively and
3 confusingly similar to Plaintiff's long-standing trademark.

4
5 12. Defendants' use of Plaintiff's mark is likely to cause confusion, mistake, or
6 deception in the minds of the public.

7 13. On October 26, 2006, Plaintiff demanded that Defendants cease all use of the
8 BETTER HOMES REALTY trade name and service marks. Defendants have refused and
9 continue to refuse to do so.

10 14. Defendants' infringement constitutes a willful and malicious violation of
11 Plaintiff's trademark rights.
12

13 **FIRST CLAIM**
14 **TRADEMARK INFRINGEMENT UNDER LANHAM ACT § 32**

15 15. Plaintiff repeats and hereby incorporates herein by reference, as though
16 specifically pleaded herein, the allegations of paragraphs 1 through 14.

17 16. Plaintiff has made substantial and continuous use to the name "Better Homes
18 Realty" since 1964.
19

20 17. Defendants' use of the BETTER HOMES name comprises an infringement of
21 Plaintiff's registered trademark and is likely to cause confusion, mistake and deception of the
22 public as to the identity and origin of Plaintiff's business, causing irreparable harm to Plaintiff
23 for which there is no adequate remedy at law.

24 18. By reason of the foregoing acts, Defendants are liable to Plaintiff for trademark
25 infringement under U.S.C. § 1114.
26

**SECOND CLAIM
UNFAIR COMPETITION UNDER LANHAM ACT § 43**

19. Plaintiff repeats and hereby incorporates herein by referenced, as though specifically pleaded herein, the allegations of paragraphs 1 through 18.

20. Defendants' use of the BETTER HOMES mark to promote, market, or sell real estate services in direct competition with Plaintiff's services constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a). Defendants' use of the BETTER HOMES mark is likely to cause confusion, mistake, and deception among consumers. Defendants' unfair competition has caused and will continue to cause damage to Plaintiff, and is causing irreparable harm to Plaintiff for which there is no adequate remedy at law.

**THIRD CLAIM
UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS
AND PROFESSIONS CODE § 17200 *et seq.***

21. Plaintiff repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 20.

22. Defendants' actions discussed herein constitute unfair competition within the meaning of California Business and Professions Code § 17200.

23. Pursuant to California Business and Professions Code § 17203. Plaintiff is entitled to preliminary and permanent injunctive relief ordering Defendants to cease this unfair competition, as well as disgorgement of all of Defendants' profits associated with this unfair competition.

**FOURTH CLAIM
FALSE DESCRIPTION**

24. Plaintiff repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 23.

25. Defendants' use of the Better Homes' name is such a colorable imitation and copy of Plaintiff's trademark established in the real estate market in the United States that Defendants' use thereof is likely to create confusion, or to cause mistake, or to deceive consumers as to the affiliation, connection or association of Plaintiff's services, or to deceive consumers as to the origin, sponsorship or approval of Plaintiff's services.

26. Defendants' use of the term BETTER HOMES comprises a false description or representation of such business or products under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).

**FIFTH CLAIM
COMMON LAW UNFAIR COMPETITION**

27. Plaintiff repeats and hereby incorporates by reference as though specifically pleaded herein Paragraphs 1 through 26 above.

28. By their acts aforesaid, Defendants are engaged in unfair competition under the common law of the State of California, causing irreparable injury to Plaintiff and damage to the public.

**SIXTH CLAIM
COMMON LAW INJURY TO BUSINESS REPUTATION**

29. Plaintiff repeats and hereby incorporates herein by reference, as though

1 specifically pleaded herein, the allegations of paragraphs 1 through 28.

2 30. Plaintiff alleges that Defendants use of Plaintiff's trademark inures and creates a
3 likelihood of injury to Plaintiff's business reputation because persons encountering Defendants
4 and their products and services will believe that Defendants are affiliated with or related to or has
5 the approval of Plaintiff, and any adverse reaction by the public to Defendants and the quality of
6 their products and the nature of their business will injure the business reputation of Plaintiff and
7 the goodwill that it enjoys in connection with its BETTER HOMES REALTY trademark.

8
9 WHEREFORE, Plaintiff prays:

10 1. That Defendants and their agents, officers, employees, representatives, successors,
11 assigns, attorneys and all other persons acting for, with, by, through or under authority from
12 Defendants, and each of them, be preliminarily and permanently enjoined from:

13 (a) using Plaintiff's trademark, or any colorable imitation thereof;

14 (b) using any trademark that imitates or is confusingly similar to or in any way
15 similar to Plaintiff's trademark, or that is likely to cause confusion, mistake, deception, or public
16 misunderstanding as to the origin of Plaintiff's services or their connectedness to Defendants;

17 (c) using Better Homes USA, BetterHomesUSA.com, betterhomesnj.com,
18 betterhomesrealty.com, betterhomesforall.com or any other name or mark continuously similar
19 thereto.

20 2. That, pursuant to 15 U.S.C. § 1117, Defendants be held liable for all damages
21 suffered by Plaintiff resulting from the acts alleged herein;

22 3. That, pursuant to 15 U.S.C. § 1117, Defendants be compelled to account to
23 Plaintiff for any and all profits derived by them from their illegal acts complained of herein;
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**COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, FALSE DESCRIPTION,
AND INJURY TO BUSINESS REPUTATION**

DEMAND FOR JURY TRIAL

1 4. That the Defendants be ordered pursuant to 15 U.S.C. § 1118 to deliver up for
2 destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising,
3 promotional material or the like in possession, custody or under the control of Defendants
4 bearing a trademark found to infringe Plaintiff's trademark rights, as well as plates, matrices, and
5 other means of marking the same;
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7 5. That Defendants be required to relinquish the domain names Better Homes USA,
8 BetterHomesUSA.com, betterhomesbyowner.com, betterhomesnj.com, betterhomesrealty.com,
9 betterhomesforall.com and to take all steps to transfer same to Plaintiff for its use.
10

11 6. That Defendants be required to refrain from using or adopting any corporate name
12 that contains Better Homes or any name or mark confusingly similar thereto.

13 7. That the Court award Plaintiff its full costs and reasonable attorneys' fees
14 pursuant to 15 U.S.C. § 1117;

15 8. That the Court grant Plaintiff any other remedy to which it may be entitled as
16 provided for in 15 U.S.C. §§ 1116 and 1117 or under state law;

17 9. For a jury trial of all issues triable before a jury; and

18 10. For such other and further relief as the Court deems just and proper.
19

20 Dated: June 12, 2007

TOBIN & TOBIN

21
22 By 

Paul E. Gaspari
Attorneys for Plaintiff
BETTER HOMES REALTY, INC.
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JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues triable before a jury.

Dated: June 12, 2007

TOBIN & TOBIN

By 

Paul E. Gaspari

Attorneys for Plaintiff

BETTER HOMES REALTY, INC.

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